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In the High Court of Judicature of Chattisgarh at Bilaspur.

Writ Petition No. 1513/2002

Petitioner : M/s Shivam Motors Pvt. Ltd., Sirgitti Industrial Estate Sector C/A, Bilaspur, Chattisgarh.

VS

Respondents : 1 State of Chattisgarh through Secretary, Ministrry of Labour, Raipur, Chattisgarh.

2 Presiding Officer, Labour Court, Bilaspur, Chattisgarh

3 Anil Rao son of B.T.Rao, resident of village Bodri, P.O.Chakarbhata, Bilaspur Chattisgarh.

S R

P. R. No. 1516/02
Presented by Shri ... J.P.Agrawal
dated ... 23.12...

Petition under Article 226/227 of Constitution of India.

(67) AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1513 of 2002

M/s Shivam Motors Pvt. Ltd.
-Versus-
State of Chhattisgarh & others

Post for order on 1st July, 2005.

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1513 of 2002

M/s Shivam Motors Pvt. Ltd.
-Versus-
State of Chhattisgarh & others

Petitioner by Shri S. M. Mendhekar, Advocate with Shri G. V. Krishna Rao, Advocate.
Respondent No.1 by Shri Arun Sao, Deputy Govt. Advocate.
Respondent No.3 by Shri Malay Kumar Bhaduri, Advocate.

ORDER
(1.7.2005)

By Justice Satish K. Agnihotri.

1. The present petition under Article 226/227 of the Constitution of India is filed against the award dated 20.5.2002 passed by the Labour Court, Bilaspur in Case No. 59/I.D.A./K-111-A/00 (Ref) whereby the Presiding Officer of the Labour Court has directed the petitioner (second party) to reinstate the Respondent No.3 (first party) in the service on the post of Mechanic w.e.f. 31.8.1999 with full back wages and consequential relief.

2. The facts in nutshell are that according to the Respondent No.3 he was engaged/appointed by the petitioner as Mechanic in his company on 1.10.1994. He continuously worked in the petitioner-company for more than 240 days in one calendar year till his services were terminated orally without prior notice on 31.8.1999. While in employment he was getting a salary of Rs. 1150/- p.m.

3. The respondent No.3 approached the Additional Labour Commissioner complaining about termination without complying with the provisions of Section 25-F of the Industrial

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Disputes Act 1947 (which will be referred hereinafter 'the Act 1947'). Having failed in the conciliation proceedings a report was submitted to the State Government. The State Government by order dated 21.8.2000 made a reference under Section 10 (1) of the Act 1947 to the Labour Court.

4. The Respondent No.3 examined himself as witness wherein he deposed that he was working as Mechanic in the petitioner company from 1.10.1994 till 30.8.1999. The Respondent No.3 further deposed that he was sent on several occasions to other cities for repairing and servicing and for that purpose the petitioner was paid separately to him. He also deposed that he had worked for more than 240 days in one calendar year.

5. The petitioner has filed written statement in the Labour Court submitting that the Respondent No.3 was not regular employee of the petitioner. He was engaged for 20 to 25 days on the basis of the need of the work. The petitioner did not have any work for the Respondent No.3 as such the Respondent No.3 was not engaged in service.

6. Mr. N. D. Joshi was produced and examined by the employer/petitioner. This non-applicant witness in his statement has stated that the services of the Respondent No.3 was engaged on need basis. In his cross-examination the witness of the petitioner did not admit that he has produced any documents which indicates that the regular payments were made and his signature was obtained.

7. Learned counsel for the petitioner submits that the Labour Court without deciding the question as to "whether the Respondent No.3 was a workman/employee of the petitioner-

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company or not within the provisions of the Industrial Disputes Act, 1947 ?" has passed the award. In support of his contention learned counsel for the petitioner relies on the decision of Hon'ble Supreme Court in the case of Himanshu Kumar Vidyarthi Vs. State of Bihar reported in 1997 (II) M.P. Weekly Notes (122) wherein Hon'ble Supreme Court has held that the temporary employee working on the basis of the need of the work his disengagement cannot be termed as retrenchment under the provisions of Section 25 –F of the Industrial Disputes Act, 1947.

8. Learned counsel for the petitioner also placed reliance on a decision of Hon'ble Supreme Court in the case of Range Forest Officer Vs. S.T.Hadimani, reported in (2002) 3 S.C.C. 25, in support of his contention that it is for the workman to prove the fact that the workman has actually worked for 240 days in a calendar year. The petitioner submits that the Respondent No.3 has not proved by submitting receipt of salary or wages for 240 days or record of appointment in order to show/establish that the workman i.e. the Respondent No.3 has actually worked for 240 days.

9. Learned counsel for the Respondent No.3 relies on two decisions of the Hon'ble Supreme Court viz. in the case of H. D. Singh Vs. Reserve Bank of India & others reported in AIR 1986 S.C. 132 and, in the case of Workmen of American Express International Banking Corporation Vs. Management of American Express International Banking Corporation reported in AIR 1986 S.C. 458; in support of his submission that working for 20 – 25 days in a month means working for the full

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month, because Sunday and other paid holidays should be taken into account for the purpose of reckoning the total number of days on which the workman could be said to have actually worked.

10. Having considered the contentions of learned counsel for both the parties and perusing the records, it is found that there is no clear finding as to whether the Respondent No.3 was regularly working i.e. 240 days in one calendar year from the period of his appointment till the date of the alleged oral termination. Learned lower Court has not considered any other facts before reaching to the conclusion that the Respondent No.3 has worked for more than 240 days in one calendar year and it is apparent that the impugned award was passed without examining the relevant papers. Since learned Lower Court has not recorded any finding with regard to the 'master and servant relationship' and 'working for 240 days in a calendar year', before passing the award in favour of the Respondent No.3 granting reinstatement and payment of back wages. The award is not sustainable.

11. It appears that no stay of the operation of the impugned award was granted. Learned counsel for the petitioner submits that the petitioner has offered reinstatement as per the impugned award to the Respondent No.3 vide letter dated 28.8.2003 (Annexure P/10) but the same was declined. Learned counsel for the Respondent No.3 submits that the offer was declined because the petitioner did not pay the back wages.

12. In the peculiar facts and circumstance of the case, the petition is allowed and the case is remanded back to the Labour Court

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Bilaspur on its original file for fresh disposal in accordance with law. Since the matter is old and involves alleged termination of service of an employee, the Labour Court is directed to dispose of the matter within a period of three months from the date of receipt of a copy of this order.

Sd/-
Satish K. Agnihotri
Judge